

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH AUGUST MARSALA,

Plaintiff,

v.

RALPH DIAZ, et al.,

Defendants.

No. 1:22-cv-00843-DAD-BAM (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING ORDER

(Doc. Nos. 4, 11, 13)

Plaintiff Joseph August Marsala is a state prisoner proceeding *pro se* and *in forma pauperis* in this action filed pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 11, 2022, plaintiff filed a motion seeking injunctive relief regarding the serving of rancid Kosher dinner trays at his institution of confinement. (Doc. No. 4.) On July 20, 2022, the assigned magistrate judge construed plaintiff's motion as a motion for a preliminary injunction and for a temporary restraining order and issued findings and recommendations, recommending that plaintiff's motion be denied. (Doc. No. 11.) Those findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be file within fourteen (14) days after service. (*Id.* at 3.)

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On August 4, 2022, plaintiff filed objections. (Doc. No. 12.) On August 5, 2022, plaintiff also filed a new motion seeking injunctive relief in the form of a court order requiring defendants to stop both retaliating against him and systematically denying him access to the law library. (Doc. No. 13.) Although plaintiff's new motion requests a different form of relief, the new motion suffers from the same deficiencies as plaintiff's previous motion for injunctive relief. The court therefore reviews both motions together. As discussed in the magistrate judge's findings and recommendations, plaintiff has not yet shown a likelihood of success on the merits of this action, and at this time the court lacks jurisdiction over defendants and the other staff members at plaintiff's institution of confinement. (Doc. No. 11.) Plaintiff's objections do not refute this conclusion reached in the pending findings and recommendations.

In accordance with the provisions of 18 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's objections and his new motion for injunctive relief, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly,

1. The findings and recommendations issued on July 20, 2022 (Doc. No. 11) are adopted;
2. Plaintiff's motion for a preliminary injunction and a temporary restraining order (Doc. No. 4) is denied;
3. Plaintiff's second motion for a preliminary injunction (Doc. No. 13) is likewise denied; and
4. This matter is referred back to the assigned magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: August 9, 2022


UNITED STATES DISTRICT JUDGE